IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2006

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE S.RAJESWARAN

Habeas Corpus Petition No.778 of 2006

R.Baskaran Petitioner

Versus

1. The State of Tamil Nadu
rep. by the Secretary to Government
Public (SC) Dept., Fort St.George
Chennai 600 009.

2.The Union of India rep. by
The Secretary to the Government
Ministry of Finance, Dept. Of Revenue
(Cofeposa) New Delhi.

3.The Superintendent of Central Prison
Central Prison, Chennai Respondents

Petition filed to issue a Writ of Habeas Corpus, to call for the records pertaining to the order of the first respondent in G.O.No.S.R.1/598-3/2006 dated 09.08.2006 and quash the same and to direct the respondents to produce the detenu, viz., R.Baskaran, before this Court, who is now detained under Section 3(1)(i)of the COFEPOSA Act, in the Central Prison, Chennai and set him at liberty.

For Petitioner : Mr.B.Kumar, Senior Counsel
Mr.S.Palani kumar.
For Respondents 1 & 3 : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

For Respondent 2 : Mr.P.Kumaresan ACGSC.

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ORDER

(Order of the Court was made by P.K. MISRA, J.)

Heard the learned counsels appearing for the parties.

2. The order of preventive detention under COFEPOSA Act is in question.

3. The order of detention has been passed on 09.08.2006. The allegation is to the effect that the detenu had abetted the offence of smuggling red sander logs to Malaysia. On the basis of the intelligence report, the godown of the detenu was searched. Thereafter the detenu is alleged to have made a confessional statement and thereafter, the order of detention was passed.

4. One of the main contentions raised by the learned counsel for the petitioner is to the effect even though the detention order was passed on 09.08.2006, the pre-detention representation made by the wife of the detenu on 3.8.2006 addressed to the Minister of Law, has not at all been considered before the detention order was passed and such representation has not been considered even thereafter and on the other hand, when the detenu filed a subsequent representation dated 17.08.2006, enquiring about the earlier representation dated 03.08.2006, the authorities have given a reply stating that no such representation dated 03.08.2006 had been received.

5. Even though a specific ground is taken by way of additional ground, in the additional counter affidavit, the authorities have denied having received any such representation dated 03.08.2006, by stating paragraph-3 of the counter affidavit:

> "3. As far as the averments made in paragraph 3 of the affidavit in HCMP.No.2 of 2006 in HCP.No.778 of 2006 are concerned, I submit that the pre-detention representation of the detenu's wife, dated 03.08.2006 addressed to the Honourable Minister for Law, has not been received by the Government."

6. The learned counsel for the petitioner has produced before us, the original acknowledgement which clearly indicates the letter sent by speed post on 03.08.2006 has been received in the Office of the Law Minister on 04.08.2006. It is not the case of the respondents that the letter posted on 03.08.2006, which was received in the office of the Minister of Law related to any other case or contained any other paper. We have to proceed on the footing that infact the letter dated 03.08.2006 contained the representation made by the wife of the detenu.

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7. Law is well settled so far as Madras High Court is concerned, that any pre-detention representation made by or on behalf of the detenu is required to be considered by the detaining authority, if such representation is received reasonably ahead of passing of the order of detention. In the present case, such pre-detention representation was received on 04.08.2006 and the order of detention was passed by the Law Minister on 09.08.2006. It is thus obvious that five days time were available to consider the representation.

8. The second question which arises for consideration is that even though for some acceptable reason such representation could not be disposed of before the order of detention was passed, law expects the authorities to dispose of such representation within a reasonable time even after the detention order was passed. Instead of considering such representation, now the respondents have the audacity to state that no such representation was received, whereas the materials on record clearly indicate that representation was received on 04.08.2006.

9. Even while rejecting the subsequent representation, the authorities have stated that no such representation dated 03.08.2006 had been received, which would clearly indicate that sufficient care had not been taken by the authorities, while considering the subsequent representation. When the detenu has made a specific reference to the representation dated 03.08.2006, instead of giving a routine reply in most careless manner, the authorities concerned should have been careful enough to trace out such representation rather than throwing out the representation by baldly stating that no such representation had been received. This mistake has been compounded further by asserting in the additional counter affidavit that no such representation had been received. This would clearly indicate the slipshod manner, in which detention order was passed and the callous subsequent indifference exhibited by reiterating that no such pre-detention representation was received.

10. The learned counsel for the respondent submitted that even though the representation dated 03.08.2006 had not been considered, similar representation made by the petitioner has been subsequently considered and rejected and therefore non-consideration of the representation dated 03.08.2006 is immaterial.

11. We are unable to accept such submission made by the learned counsel for the respondents. The representation dated 03.08.2006 had been made at a stage when order of preventive detention was yet to be passed. If concerned authority namely, the Minister would have bothered to scan the representation, it is quite possible that while arriving at subjective satisfaction, the concerned authority would have taken a different view. It is not for us to consider what would have been the effect if the representation would have been placed before the appropriate authority at appropriate stage. More over, even assuming subsequent representations

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are of similar nature, the very fact that pre-detention representation had been made, but was not brought to the notice, the authorities should have more careful in tracing out such representation rather than rejecting subsequent representation by taking a false plea that no such representation had been received. This itself clearly discloses the lack of proper attitude in such matters.

12. The learned counsel for the respondent also invited our attention to the decision of the Supreme Court in D.Anuradha v. Joint Secretary (2006)2 MLJ (Crl.) 745). We have carefully gone through the aforesaid decision and hardly find anything relevant in the said decision in the facts of the present case. In the matter before the Supreme Court, the detenu was going on making repeated representations and there was some delay in considering the fifth representation. The Supreme Court observed that the time was required for translating such representation and more over similar representations having also been rejected earlier, the delay in considering such last representation was immaterial in the facts and circumstances of the said case. The ratio of the said decision cannot be applicable, where infact representation was made much before the order of detention was passed and if for some reason the same could not be decided before the order of detention was passed, it was at least the duty of authorities to consider the same soon after the order of detention was passed.

13. There is no other fundamental right more dear to a person than the right of liberty as envisaged under Article 21 of the Constitution of India. Supreme Court has repeatedly observed that Article 21 and Article 22 form corner stone of the Indian Constitution and such right should be jealously guarded by all concerned. The present case clearly reflects the careless attitude, while passing orders of preventive detention and thereafter dealing with the representation in most casual manner.

14. For the aforesaid reasons, we quash the order of detention and the detenu shall be released forthwith, unless his presence is required in connection with any other case. The habeas corpus petition is allowed accordingly.

ksr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To
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2.The Secretary to the Government
Union of India,
Ministry of Finance, Dept. Of Revenue
Cofeposa) New Delhi.

3.The Superintendent of Central Prison
Central Prison, Chennai

4.The Public Prosecutor
High Court, Madras.

5. The Sub Assistant Registrar,
Cofeposa Department,
High Court, Madras.

+1 cc to Mr.S.Palanikumar, Advocate Sr.No.63666.

+1 cc to P.Kumaresan Advocate Sr.No.63662.

PV(CO)
dcp/6.6.07 H.C.P.No.778 OF 2006

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